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PRE-APPEAL BRIEF REQUEST FOR REVIEW

Docket Number (Optional)

10012166-1

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on 3/13/06

Signature W. Wagner Jr.

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Application Number

09/898,572

Filed

07/03/01

First Named Inventor

John G. APOSTOLOPOULOS

Art Unit

2681

Examiner

Beamer, T.M.

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).

Note: No more than five (5) pages may be provided.

I am the

☐ applicant/inventor.
☐ assignee of record of the entire interest.
See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.
(Form PTO/SB/96)

☒ attorney or agent of record. 35,398
Registration number _____

☐ attorney or agent acting under 37 CFR 1.34.
Registration number if acting under 37 CFR 1.34 _____

John P. Wagner Jr.

Signature

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3/13/06

Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.

☐ *Total of _____ forms are submitted.

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:

Apostolopoulos et al.

Serial No.: 09/898,572

Filed: July 3, 2001

For: METHOD FOR HANDLING
OFF STREAMING
SESSIONS BETWEEN
WIRELESS BASE STATIONS
IN A MOBILE STREAMING
MEDIA SYSTEM

Confirmation No.: 2887

Examiner: Beamer, T.

Art Unit: 2681

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Mail Stop AF
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

Applicants request review of the final rejection (please see the Office Action mailed December 13, 2005) of the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reasons stated on the attached sheets.

Examiner: Beamer, T.
Art Unit: 2681

1 of 4

Serial No.: 09/898,572
10012166-1

Remarks Accompanying Pre-Appeal Brief Request for Review

Claims 1-10 are rejected under 35 U.S.C. §102(e) as being anticipated by Agrawal et al., US Patent Application Publication Number 2002/0193114 (hereinafter “Agrawal”). Independent Claims 1 and 6 each recite “sending a first multiple description bitstream from said first base station to said mobile client and sending a second multiple description bitstream from said second base station to said mobile client” (emphases added).

It is recognized that that, although the claims are read in light of the specification, limitations appearing in the specification are not read into the claims. However, it is also recognized that the claims are read as one of ordinary skill in the art would read them. Furthermore, it is recognized that an Applicant can be his or her own lexicographer, as long as the meaning of a term is not repugnant to the usual meaning of the term. Moreover, if extrinsic reference sources evidence more than one definition for the term, the intrinsic record (e.g., the disclosure of the instant application) must be consulted to identify which of the different possible definitions is most consistent with Applicants’ use of the term – where there are several common meanings for a claim term, the patent disclosure serves to point away from the improper meanings and toward the proper meanings.

It is respectfully submitted that “multiple description bitstream” has an ordinary meaning in the art, and that meaning is consistent with the meaning provided on page 16 (lines 30-36) of the instant application. That is, as defined in the art as well as in the instant application, “multiple description bitstreams” have the property that each bitstream contains complementary information (as opposed to duplicating the information).

In the “Response to Arguments” included in the final rejection (please see the Office Action mailed December 13, 2005), the Examiner contends that the present claims do not require that the information sent in the first and second multiple description bitstreams has to be different. Applicants respectfully disagree. Specifically, Applicants respectfully submit that, in light of the recognized guidance summarized above, the present claims do indeed recite that the information sent in the first and second multiple description bitstreams is different.

Applicants respectfully submit that there are at least three independent but synergistic arguments that support Applicants’ position that the claims recite first and second multiple description bitstreams that are different from one another:

1. Claims are read as one of ordinary skill in the art would read them. Applicants believe that “multiple description bitstreams” is a term of art, understood by those in the art as having the property that each bitstream contains complementary information (as opposed to duplicated information). Thus, even absent a definition of the term in the specification, the term is understood by those in the art as referring to complementary bitstreams.

2. Applicants can be their own lexicographer, as long as the meaning of a term is not repugnant to the usual meaning of the term. Page 16 (lines 30-36) of the instant application provides the Applicants’ definition of the term, and that definition is not repugnant to the usual meaning of the term.

3. Even if there is some question with regard to the usual meaning of the term, the intrinsic record (e.g., the disclosure of the instant application) must be consulted to identify which of the different possible definitions is most consistent with Applicants’ use of the term. Again, please see at least page 16 (lines 30-36) of the instant application.


Applicants respectfully assert that Agrawal does not teach the first multiple description bitstream and the second multiple description bitstream as recited in Claims 1 and 6. Instead, Applicants understand Agrawal to teach at paragraph 81 that “when the mobile station moves across IP Subnets, multiple copies of the same data are to be sent via multiple base stations to the mobile station (that is, Packet A and Packet B must be identical)” (emphasis added). Because Agrawal fails to teach at least one element recited in Claims 1 and 6, Applicants respectfully contend that Agrawal does not anticipate Claims 1 and 6. Because Claims 2-5 and 7-10 depend on Claims 1 and 6 and recite additional limitations, Applicants also contend that Agrawal does not anticipate Claims 2-5 and 7-10.

Thus, Applicants respectfully submit that an essential element needed for a *prima facie* rejection of Claims 1-10 is missing, and respectfully request review of the 35 U.S.C. §102(e) rejection of these claims.

Respectfully submitted,

WAGNER, MURABITO & HAO LLP

Date: 3/13/06



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